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**FILED**  
DISTRICT COURT OF GUAM

JUN 25 2008<sup>μ</sup>

**JEANNE G. QUINATA**  
Clerk of Court

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF GUAM**

**UNITED STATES OF AMERICA,**

**CRIMINAL CASE NO. CR08-00004**

**Plaintiffs,**

**DEFENDANT JOSEPH  
PANGELINAN'S MEMORANDUM  
REGARDING WITNESSES SELF-  
INCRIMINATION; CERTIFICATE OF  
SERVICE**

**vs.**

**JOSEPH PANGELINAN, et al.,**

**Defendants.**

**INTRODUCTION**

A witness in a proceeding may claim the privilege against self-incrimination where it is clear from the question that the response may implicate the witness. See Hashagen v. United States, 283 F.2d 345 (9th Cir. 1960). The Supreme Court of the United States has stated "the Fifth Amendment privilege against compulsory self-incrimination 'protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used'." Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S. 177, 190 (2004) (citation omitted).

1 Furthermore, "ethical duties require prosecutors to warn unrepresented  
2 witnesses of the risk that the testimony they are about to give may be used against  
3 them. See United States v. Pinto, 850 F.2d 927, 934 & n. 1 (2d Cir.), cert. denied, 488  
4 U.S. 867, 932, 109 S.Ct. 174, 323, 102 L.Ed.2d 143, 341 (1988) (ABA Standards for  
5 the Administration of Criminal Justice § 3-3.2(b) requires prosecutor to advise the  
6 witness concerning possible self-incrimination and the possible need for counsel.)."  
7 United States v. Jackson, 935 F.2d 832, 847 (7th Cir. 1991) (internal quotes omitted).  
8 Although Jackson concerned a defense witness, the ethical obligation is not so limited.

9 However, a prosecution witness may be compelled to testify by being granted  
10 immunity in the matter. Id. Should a witness be granted immunity with regard to his or  
11 her testimony, defense counsel should be allowed to address the immunity agreement  
12 between the prosecution and the witness during cross-examination. See United States  
13 v. Arnell, 187 Fed.Appx. 724, 730-731. Furthermore, the prosecution has a duty to  
14 disclose the details of any immunity deal struck between prosecution and a witness.  
15 The Ninth Circuit, in addressing the issue of whether a Brady violation occurred by  
16 prosecution's failure to disclose a possible immunity agreement in the case before  
17 them, stated:

18 [i]n criminal cases, the prosecution has a duty to disclose all  
19 material evidence that is favorable to the accused. Brady, 373  
20 U.S. at 87, 83 S.Ct. 1194. This duty extends not only to  
21 exculpatory evidence but also to "evidence that the defense  
might have used to impeach the Government's witnesses by  
showing bias or interest." United States v. Bagley, 473 U.S.  
667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

22 Horton v. Mayle, 408 F.3d 570, 578 (9th Cir. 2005). The Ninth Circuit, in Horton,  
23 went on to find that the prosecution's failure to disclose the immunity agreement, if one  
24 did in fact exist in that case, undermined confidence in the outcome of the agreement  
25 and remanded to the lower court to confirm its existence. Horton, 408 F.3d at 581.

1 We respectfully request that unrepresented witnesses be informed concerning  
2 possible self-incrimination and that any immunity agreements made by prosecution  
3 with respect to these witnesses be disclosed to defense counsel.

4 Dated this 25 day of June, 2008.

5 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
6 **Attorneys for Defendant**  
7 **JOSEPH PANGELINAN**

8 By: 

9 **LOUIE J. YANZA**

1 **CERTIFICATE OF SERVICE**

2 I, LOUIE J. YANZA, hereby certify that on the 25<sup>th</sup> day of June, 2008, I  
3 caused a copy of the foregoing and annexed **Defendant JOSEPH PANGELINAN's**  
4 **Memorandum Regarding Witnesses Self-Incrimination** to be served upon the  
5 parties hereto, by either delivering, faxing and/or mailing a copy of same to their  
6 attorneys of record, as follows:

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8                                   Dated this 28<sup>th</sup> day of June, 2008.

9                                   **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
10                                  Attorneys for Defendant  
11                                  **JOSEPH PANGELINAN**

12  
13                                  By: \_\_\_\_\_

  
                                      **LOUIE J. YANZA**